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INFO RUEHAD/AMEMBASSY ABU DHABI PRIORITY 0020
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RUEHBJ/AMEMBASSY BEIJING PRIORITY 0323
RUEHRL/AMEMBASSY BERLIN PRIORITY 0061
RUEHSW/AMEMBASSY BERN PRIORITY 0053
RUEHBY/AMEMBASSY CANBERRA PRIORITY 4669
RUEHLO/AMEMBASSY LONDON PRIORITY 0154
RUEHMD/AMEMBASSY MADRID PRIORITY 0057
RUEHME/AMEMBASSY MEXICO PRIORITY 0069
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0277
RUEHFR/AMEMBASSY PARIS PRIORITY 0284
RUEHRB/AMEMBASSY RABAT PRIORITY 0015
RUEHRO/AMEMBASSY ROME PRIORITY 0107
RUEHUL/AMEMBASSY SEOUL PRIORITY 0227
RUEHGP/AMEMBASSY SINGAPORE PRIORITY 0446
RUEHKO/AMEMBASSY TOKYO PRIORITY 0613
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DEPT PASS TO USTR STAN MCCOY AND RACHEL BAE, STATE FOR
EB/TPP/MTA/IPC

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PGOV](#) [NZ](#)

SUBJECT: NEW ZEALAND REACTION TO JOINING
ANTI-COUNTERFEITING TRADE AGREEMENT (ACTA)

REF: SECSTATE 182554

¶1. Summary: New Zealand officials are generally supportive of the objective of enhanced international cooperation in the enforcement of intellectual property rights (IPR) as proposed in reftel and welcome the opportunity to participate further in its development but are also seeking clarification to certain key concepts expressed in draft proposal. End Summary.

¶2. Bronwyn Turley, principal policy advisor responsible for IPR in the Competition, Trade and Investment Branch at the Ministry of Economic Development (MED), has informed Econoff that joining ACTA could provide a solid foundation for the development of further international enforcement efforts and believes it sends a strong signal that trade in counterfeits will not be tolerated.

¶3. Despite GNZ's initial positive reaction to ACTA, they have provided specific comments and are seeking clarification to the following points:

-- International cooperation - GNZ maintains that there are some areas where greater coordination of efforts would be beneficial, such as a commitment to undertake multi-jurisdictional enforcement action and the provision for government sponsored training to third countries i.e., non-ACTA countries. In other areas, international cooperation already occurs within a range of different inter-governmental organizations, such as APEC, the World Customs Organization (WCO) and the World Intellectual Property Organization (WIPO). Should a starting principle of the proposal be that the existing efforts by APEC, WCO, WIPO et al, not be duplicated?

-- Role of IP Rights Holders - If IPRs are private property rights then enforcement activity by right holders is essential if ACTA members are to address the illegal trade in counterfeits. Rather than have the government act as a

substitute for enforcement efforts by right holders, GNZ maintains that any enforcement framework would need to foster a partnership arrangement. Mindful of the risks of political pressure to shift the balance of responsibility for enforcement away from right holders and onto government - how does USTR see the proposed Agreement striking the appropriate balance between responsibilities of right holders and those of government for enforcement efforts?

-- Accommodating National Differences - GNZ believes it is important that authorities and right holders have the necessary tools available to prosecute IPR enforcement. They believe that discussing standards for enforcement would be valuable but it will be important to recognize in any such discussion that national differences exist. For example, Constitutional frameworks may mean that it is inappropriate to establish sentencing guidelines or give authority to right holders to undertake search and seizure operations. In small countries with limited resources, the establishment of specialized IP police, prosecutors and/or courts may be impractical. In GNZ's view, it would be useful to clarify expectations at the outset, in particular to avoid the perception that a "one-size-fits-all" approach will take hold.

14. MED being conscious of international sensitivities of any effort to address IP enforcement in international fora, believes that the political messaging around this proposed Agreement will be crucial to its success. To avoid a counter-productive reaction, GNZ believes it will be important to prevent the perception from taking hold that this initiative represents a "threat" or that it is a "Trojan horse" for the introduction of TRIPS-plus substantive obligations.

Keegan